

## **Remarks**

This Amendment is in response to the Office Action of April 21, 2010, wherein the Examiner rejected claims 1-20.

The Examiner first objected to the drawings for some reference number errors. Applicants have corrected the drawings above to overcome these objections.

The Examiner first rejected claims 14-20 under 35 U.S.C. 112 as failing to follow the written description requirement. The Examiner states that there is no support in the specification or drawings for more than one first clip-retaining member and more than one second clip-retaining member. Applicants have changed the language to recite "a clip-retaining portion." Such a portion for example can be one of the pair of blocks 64, 66 or the pair of legs 72, 73.

The Examiner next rejected claims 1-20 under 35 U.S.C. 112 as being indefinite for failing to particularly point out the subject matter which applicant regards as the invention. Applicants have revised the claim language above which should overcome these rejections.

Claims 14 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Andrew (US Patent No. 3,602,227).

Regarding claim 14, Fig. 1 of Andrew discloses a two piece retainer having a formation *below the base* to retain the two pieces in a vertical direction and a U-shaped clip that engages opposite sides of a projection 7 to retain the clip in a horizontal direction.

Claim 14 has been amended to describe the cap which provides an overhang and a vertical clearance between the cap and the base to retain the clip onto the tube

holding formation. This is shown for example in Figure 2 of the specification wherein the cap 86 overhangs the base raised portion 50c to provide a vertical clearance for the clip to slide snugly between the cap and the base. This feature allows for an easy and reliable engagement of the clip to the tube holding formation. In contrast, the vertical engagement of the two pieces in *Andrew* occurs below the upper surface of the holder and can not be as easily visually verified and assembled during an emergency as compared to the present invention set forth in claim 14.

Because claim 14 distinguishes *Andrew*, dependent claims 15-20 also distinguish this reference as well.

Claims 1, 4-5, 7-8, 12-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* (US Patent No. 6,526,978 B2) in view of *Schiefer et al.* (US Patent No. 4,118,838).

*Dominguez* show an endotracheal tube holder having a base including a bottom surface bearing against a patient's face; a tube-holding assembly having a block 18 and two smaller blocks or arms extending from the block. However, *Dominguez* does not disclose the *clip legs straddling the tube-securing block* and being engaged to the clip-securing blocks as now claimed in claim 1. *Schiefer et al* also does not disclose this feature.

Because these two references do not disclose the features of amended claim 1, claims 1-13 should all now be allowable.

Furthermore, regarding independent claim 14, neither *Dominguez* nor *Schiefer et al* disclose a clip hold down portion providing a cap that overhangs the base and forms a vertical clearance between the base and the cap, the clip at least partially slidably

beneath said cap and said base, said second clip-retaining portion engagable with said first clip-retaining portion when said clip is slid at least partially between said cap and said base in a linear direction to latch said first and second tube-bearing surfaces tightly against an endotrachael tube located therebetween.

This arrangement give the emergency caregiver a view from the top of the endotrachael tube holder that verifies the proper engagement of the clip with the clip holder and base both in the vertical direction, by virtue of the engagement of the clip partially between the base and the cap, and in the horizontal direction by virtue of the first and second clip-retaining portions.

Because these two references fail to teach the structures of amended claim 14, claims 14-20 should all be allowable.

Claims 2-3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Schiefer* as applied to claims 1, 4-5, 7-8, 10, 12-15, and 17 above, and further in view of *Hayatdavoudi*.

*Hayatdavoudi* also does not disclose the features of amended independent claims 1 and 14 so that all claims 1, 14 and dependent claims 2-3 and 16 should be allowable.

Claim 6 is rejected under U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Schiefer* as applied to claims 1, 4-5, 7-8, 10, 12-15, and 17 above, and further in view of *Rosenbeck*.

*Rosenbeck* also does not disclose the features of amended independent claim 1 so that all claims 1 and dependent claim 6 should be allowable.

Claim 9 is rejected under U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Schiefer* as applied to claims 1, 4-5, 7-8, 10, 12-15, and 17 above, and further in view of *Islava*.

*Islava* also does not teach the features of amended claim 1 so that claims 1 and 9 should also be allowable.

Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Schiefer* as applied to claims 1, 4-5, 7-8, 10, 12-15, and 17 above, and further in view of *Wing et al.*

*Wing et al.* also does not teach the features of amended claim 14 so that claims 1, 11, 14 and 19 should all be allowable.

Claims 14 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Young, Jr., et al.*

*Young, Jr., et al.* also does not teach the features of amended claim 14 so that claims 14, and 19-20 should all be allowable.

Applicants submit that the claims should now all be in allowable condition.

Respectfully submitted,



Randall T. Erickson, Reg. No. 33,872

Erickson Law Group, PC  
1749 S. Naperville Rd., Suite 202